

8

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 8th day of June, 1998

BEFORE

THE HON'BLE MR. JUSTICE V.P. MOHAN KUMAR

WRIT PETITION NOS. 17965 & 19981-19983 OF 1996

BETWEEN :

1. M/s Sri Ganesh Textile Mills Mazdur Sangha (R),
by its President,
Sri K. Thimmappa,
B.M.S. Office,
Ashoka Road,
Davangere - 577 002
2. Sri Siddappa,
S/o Marulasiddappa, major,
T.No. 618, Dpet. of Design
Mixing, Sree Ganesar Textile
Mills Ltd., P.B. Road,
DAVANGERE - 577 002
3. Sri Basavaraj
S/o Siddappa,
T.No. 194, 4th Cross,
Anjaneya Badvane,
DAVANGERE
4. Sri Veerabhadraiah,
S/o. Veeraiah, T.K.No. 137,
Basapur Road, Near Kshirsagara
Shala Niveshane, DAVANGERE
5. Sri Manjunath, S/o Kubersingh,
T.No.199, Hosa Chikkanahalli Extension,
Near Anjaneya Temple, Nittuvalli,
DAVANGERE TALUK

294

.. PETITIONERS

u

(Sri Jagadeesh Mundaragi, Advocate)

295

A N D :

1. The Labour Commissioner,
Office of the Labour Commissioner,
V.I.S.L. Building, J.C. Road,
Bangalore
2. The Assistant Labour Commissioner,
Bellary Division, Behind Aruna Thetre,
Davangere - 577 002
3. Sree Ganesar Textile Mills Ltd.,
P.B. Road, Davangere, by its
General Manager

... RESPONDENTS

(Sri C. Ramakrishna, H.C.G.P. for R-1 & 2
Sri B.S. Kamate for R - 3)

Writ Petitions filed under Article 226 & 227 of the Constitution of India, praying to issue; A writ in the nature of certiorari quashing the order dt. 18.1.96 passed in Case No. ALCD/KV/1,2,3/ID.4/95-96 passed by the Learned Assistant Labour Commissioner & Conciliation Officer, Bellary Division, Davangere at Annexure - 'G', etc.

These Writ Petitions coming on for Preliminary hearing in "B" Group, this day, the Court made the following :

O R D E R

Petitioners Nos. 2 to 5, who claim to be protected workers and are sought to be dismissed by the employer.

h

296

employer. An application for permission as contemplated under Section 33 (2)(b) of the I.D. Act was filed before the Assistant Labour Commissioner. The permission was granted. This is challenged before me in these proceedings.

2. The main contention urged by the learned counsel Mr. Jagadish Mundargi is that the permission has been sought totally in a different dispute wherein the petitioners herein are not parties and who had no occasion to contest and, therefore, the order is ab initio void. This may be or may not be correct. That is not an issue to be gone into at this stage. All that is happened is the Management has been given permission by the Assistant Labour Commissioner, the 2nd respondent herein. The Assistant Labour Commissioner entertained the application in a totally different dispute and as such the petitioners had no occasion to contest the matter. That certainly does not affect the proceedings herein. There is no need to ascertain whether the order is valid or

W

27

or invalid. It is always open to the Management to dismiss the employees. The hindrance placed in certain cases is what is visualised in Sections 33 (2)(b) or 33 (3)(b). If these provisions are not complied with, the order may be invalid. This is a point to be urged by the employees who have suffered the termination of service as and when a dispute questioning the dismissal is raised. An employee can raise a dispute challenging the termination and in doing so, he can set forth the ground that there is no ground to terminate his services and that permission granted is **invalid**. Those facts and circumstances need not be gone into in these proceedings. As the order passed under Section 33(2)(b) is merely an enabling order, it will not confer any special right on the employees or the employer either way. Therefore, there is no need to go into the validity of the impugned order at this stage. It is sufficient if the parties are relegated to work out their rights in a proceeding initiated by the

W

298

the employees challenging the termination. The
writ petitions are disposed of as above.

Sd/-
JUDGE



Pkc/Hrp